

From: philip a kenner [mailto:██████████]
Sent: Wed 9/17/2008 12:33 AM
To: Moreau, Ethan
Subject: Re: PalmsPlace Units 31302 & 31304

Ethan: PLEASE SEE MY IMBEDDED COMMENTS IN RESPONSE. I hope this effort allows us to get back on the same page...

Phil

I am not sure if you did not receive my text the other day regarding the Palms Place and my concerns proceeding with the closing, however, I will try to explain in this email.

I was going to purchase a place at the Cosmopolitan a few years back, at that point you talked me into buying at Palms Place from your buddy and business partner with a profit to him of over 500k, which at the time you said when I closed the unit would be financed and I would not be out of pocket a penny and if I didn't want the units at that time you would buy half of the units from me (I have a very good memory).

Please remember that you originally wanted to buy a home in Vegas and at my recommendation, you didn't. I hope you are aware that the homes in the \$1.5m-2m range you were considering would now be worth less than half the purchase price that you would have paid at that time.

The Cosmo project, in addition to the Hard Rock, Ivana, Panorama, W Hotel, Randy Gerber's, etc. are all failed Vegas condo-hotel projects. The TRUMP project which completed construction is appraising for 20-30% below the purchase prices of 2+ years ago. In fact, TRUMP built their studios smaller than the current minimum square footage requirements for condo hotel lenders to finance, so those are a total failure. I talked another friend out of the TRUMP deal, because I found out the lending couldn't happen on the studios. I talked another friend out of the Panorama project which now sits 75% empty with resale prices below the PHASE I releases 4 years ago. The one and only successful project in Las Vegas during this time period has been Palms Place, which is where I suggested you buy. Values are well above the original offering prices IN PHASE 4 and there are at least a few lenders willing to lend on the PalmsPlace. TRUMP, WYNN, Panorama, and others are just foreclosing on investors' deposits when they cannot close. NO QUESTIONS OR TOLERANCE!! The two PalmsPlace units are still appraising above the current contract price that you have agreed to with Tommy. Also, the contract price is LESS than many people paid PHASE III pre-construction. What Tommy and George make is irrelevant to your return. Short-term and long-term, I believe it will hold its value as evidenced by its strength in the current specific environment in Vegas and at the Palms. Finally, there is a steady stream of rental income being generated and that particular market (rentals at the Palms) is on an upward slope. So the monthly income is actually getting better month to month. In other words, you wanted a place in Vegas and my advise to get you into the single most successful, revenue generating, appreciating product in the market vs. a home which would absolutely be upside down right now, not income producing, depreciating daily (as more and more foreclosures become available) WAS GOOD ADVICE as far as I am concerned. My advice, should you elect to follow it, is to honor the contract you signed (not breach) and take advantage of the equity that you have built in the deal, including but not limited to the \$100,000 reduction (off of the contract price) that I negotiated on your behalf, as well as many other unconventional concessions which Tommy has reluctantly agreed to in good faith. He was extremely frustrated with me in the first place for asking for the reduction, then furious when I requested and received the additional holdback loan for you from Tommy. I also would start taking advantage of the approximate \$7500/month in rental income being generated at the Palms for units like this. So there is no confusion, I DO work for YOU (not Tommy) and I have done everything humanly possible for you gain as much as possible (at Tommy's expense) and to avoid any ramifications of you not honoring your agreement, including losing your deposit, all the gained equity and the ongoing rental income. In the end this is a great deal for you, that is, and will continue to make you money. It is SIGNIFICANTLY better than the alternatives you were considering and that is an absolute fact.

We now have a situation where financing on this unit is 60 percent and I do not have the cash to



close!!! As my financial advisor I am dissapointed that you would allow me to be in a position where I have zero cash and owe over 1.5million on a condo.....

Please understand that your current cash scenario is not a reflection of anything that I have, have done, or not done for you during our relationship. In fact, two years ago, you and I met in Edmonton the day of your team Halloween Party for 3-4 hours to discuss your savings. We discussed your current liquid and Private investments in detail. We were both in agreement that the Private deals were appropriate for your timeline after detailed Q&A on each one. We also agreed that you needed to "step up" your savings plan since you had contributed very little in recent years, but you would be "OK" if you were more conscious of your savings versus spending from that point in time looking forward. In that meeting, we discussed the 2005-06 season savings plan. You told me that you and your family were living on \$20,000 per month. We agreed that, under that scenario, you would be able to save ~\$500,000. In the 2005-06 season, to the best of my recollection, you did not contribute any funds to your investment/savings account at US Trust whatsoever.

We again met in the summer (2007) in Hermosa Beach to discuss the status of your new contract and planned savings, even though you did not contribute anything during the 2006-07 season as planned.

NEW EDMONTON DEAL:

2007-08	\$2,750,000	\$1,750,000	\$1,000,000 (BONUS)
2008-09	\$1,750,000	\$1,750,000	
2009-10	\$1,750,000	\$1,750,000	
2010-11	\$1,750,000	LY \$1,750,000	

\$1,000,000 payable July 31, 2007

We discussed and agreed on a plan for the above deal as follows:

We agreed that in the first year of your new deal @ \$1.75m (not including the summer \$1m bonus payable July 31, 2007), you were again going to spend \$20,000 per month (your words not mine) or \$240,000 for the year (12 months) starting in October 2007. We agreed that you would have ~\$810,000 after tax (~40% tax rate) and spending and be ready to contribute to your savings plan. You were going to make 5 equal payments of ~\$162,000 in November, December, January, February, & March to your savings account. By the end of the 2006-07 season, you did not make any contributions to your US Trust account. This had nothing to do with me. You were also in agreement that during the term (4 years) on this deal, you would be able to match the same savings as year one (~\$810,000). You were pleased that in spite of your lack of savings until that meeting in Hermosa Beach, you would have ~\$3.24m NEW in the bank during your deal +/- portfolio returns. This included the fact you were planning to spend your entire \$1m, July 31, 2007 bonus on a Commercial Building in Edmonton that I had nothing to do with.

The only fact between you and I is that you should have been able to contribute ~\$1.4m after the time you signed the agreement with Tommy to purchase the two units at PalmsPlace, or at least something. I had no control over that. That is precisely why we have those meetings regularly to discuss your savings plan, past & future. I travel 200+ days a year, and always at a moments notice when clients request a face-to-face meeting. You never requested additional meetings because you were confused by the saving or investment plans we made.

To the best of my recollection, the last meeting you asked for was in Vegas at Treasure Island when you were injured with your broken leg, and I obliged. I recall discussing all of our private deals, as usual. You never raised concerns about any of the deals including the Palms Place units. In fact, you visited the units the next day and expressed your gratitude about the deal immediately following the tour.

The way I see it, we have met on a regular basis to discuss your finances, current and future investments, not to mention that I am available for you by phone or email 24/7/365. I am an open book and you have and can continue to ask me anything about any and all of our dealings. I expect this of all my clients.

There have also been discrepancies and weird contracts that have been drawn up, that even attorneys

can not make sense of, which add to my uneasiness.

I truly do not understand what so called "weird" contracts are outstanding. Everything was clean enough for a Title Company to be willing to offer Title Insurance on this deal. There would be zero chance of that in today's market if it was not 100% clear. Anything that is viewed by you as being unconventional, is designed specifically to save you money and/or help you close. If you or the attorneys need a more clear explanation, I am happy to provide it. If you really want to keep things very simple and conventional, then simply pay what you have agreed to pay, provide the amount the lender is requiring as a down payment and close. Or we can keep things as they are, "weird" but to your sole benefit. Again, I am just trying to help you honor your agreement to protect you from any losses and to realize maximum gains.

Like I said I before, out of good faith Tommy should realize how bad this deal is for me and return the 290k and my financial advisor should be fighting to get this money back, especially after I gave Tommy 200k for an investment that has returned nothing to me and I have not had one financial update over the last three years regarding Eufora.

You are only looking at this from your side of the equation. Let me be clear here before I continue so there are no misunderstandings, I am on your side and I am fighting for you. That's why I have negotiated a \$100,000 reduction from the agreed upon contract price (something Tommy did NOT have to agree to and is hardly happy about), a \$270K hold back (which Tommy is also doing in good faith and is even less happy about) and the \$40,000 I am personally lending you (as your friend) to help get it done, which is hardly my responsibility as your advisor. What you fail to realize is that Tommy had several opportunities to sell this condo to others for more money and didn't because I convinced him to do it for you...to help you. I also convinced him to do all of the things I mentioned above. So perhaps you should consider that from his point of view for a moment. He feels that HE is the one who is bending over backwards to help you close and is the one that has already lost out on other (better) offers based on your agreement. Now your asking him to "do the right thing" while you are the one who is breaching your agreement with him as he is doing nothing but trying to help you honor it. Again, this is what he feels and whether you or I agree with it, this is what you are facing. I am not sticking up for him. I only tell you this so you can manage your expectations. It doesn't matter if we think he's right, or if we think he is being fair etc. It only matters what your agreement was and what the actions by the parties to that agreement are to date. Having said that, think about what happens next; you fight him, he fights you. You both spend money to deal with it, whatever the outcome. He has a signed agreement that he has honored and has made significant concessions and accommodations to help you honor it. And your side of the story is that you want out because you can't afford it and you think it's a bad deal (which in fact it was not under the original terms and it is certainly not under the improved terms). That will also be made clear if you go that direction against my advice. So what do you think the outcome of all this will be? THAT is what I am trying to protect you from....as well as from losing what you already have invested and gained. You made a deal and have a written obligation with this person that has no reason or inclination to lose more money, just because you can't or choose not to complete the transaction. You NOW may not agree with my advice to buy it in the first place and I respect your opinion, but you are simply wrong in your assessment of the deal. The deal has not changed, your cash flow situation may have but that's another discussion, The facts are the facts and this deal is a winner particularly when compared to your original plan for Vegas.

I have been extremely loyal to you since I was 17 and have not complained about receiving zero return on ANY of my investments with you, which total over a million dollars, but I think I am at a point where I feel Im not getting good advice and this deal which wipes me out completely of liquid cash should not be accomodated by the person responsible for my financial future.

Firstly, let me start my response to this statement by saying that I also have been extremely loyal to you, even if you now seemingly fail to recognize it. As far as your investments go, you and I should probably have another in depth conversation with respect to each of those investments so that you will not make any more statements which are completely inaccurate, misleading and/or false. For example, you obviously have forgotten about the \$100,000 investment which you made in Hawaii, which yielded a \$42,553 cash disbursement in less than two years, with no dilution of your equity

interest in a continually appreciating asset. The same goes for your other investments, which you clearly need to be reminded of. If I may be so bold, in some cases, I think you are confusing unrealized gains with your so called "zero returns". We have had lengthy discussions about this same topics in our annual reviews. You never raised concerns until your cash flow became tight during your closing with Tommy.

You need to get my money back or I will take steps to do so. I would be happy to express these same sentiments verbally, but I thought in an email format would allow you to understand the severity and the importance of this to me.

Again, I will back you up to the extent that I can but as I said, you have a binding agreement and I just wanted you to know what you are facing with Tommy on the Palms deal.

I am your friend, I care about you, and have supported you for over 15 years with sound advice. I will continue to support you but it is totally unreasonable and unfair for you to suggest that I "need to get [your] money back". Under the circumstances, I cannot do this any more than I can if I rob a bank. If you want to go that route, it's your prerogative and I will help you in any way that I can, but I would not advise that you go that route. What we should be doing is working together to honor the deal, take advantage of the profitability of it (and the concessions being offered to close it) and perhaps flip it so we can begin a more aggressive savings plan as I have advised all along.

I hope you understand the sensibility in this message. I appreciate your opinion and would look forward to discussing further, so you and I are on the "same page" again after 15 years of history together. I am not sure of your purpose for the US Trust complete withdrawal, but I can only assume it was in preparation to complete the Palms Place deal.

Please advise on your thoughts for the next step. As always, I am here to assist any way I can. Phil

-----Original Message-----

From: philip a kenner [REDACTED]
Sent: Sun 9/14/2008 4:11 PM
To: Moreau, Ethan
Cc: Tommy Constantine
Subject: PalmsPlace Units 31302 & 31304

Ethan: Attached are the final docs that you need to sign to complete this transaction.

FSBO contract - Unit 31302
FSBO contract - Unit 31304
Moreau/Kenner Promissory Note - \$40,000

The lender and the Title Company want to get this off their plate. They have been dealing with this closing too long, and the STRESS levels of Title Companies and Lenders in this environment are tenuous at best.

I am sincerely concerned that we will lose your lender if we have not completed this transaction this week. There are no others in this market that are available to us right now.

Please call me tonight when you receive this. Phil